

Senate Bill No. 731

Passed the Senate March 31, 2011

Secretary of the Senate

Passed the Assembly June 20, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 391.7, 1141.20, and 1141.23 of, and to add Section 391.8 to, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 731, Committee on Judiciary. Civil actions.

(1) Existing law permits a court, on its own motion or the motion of any party, to enter a prefilng order prohibiting a vexatious litigant from filing any new litigation in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Existing law permits a presiding judge to allow a vexatious litigant's filing only under specified circumstances, and permits the presiding judge to condition the filing upon the furnishing of security. Existing law prohibits a clerk of a court from filing any litigation presented by a vexatious litigant subject to a prefilng order unless the vexatious litigant first obtains an order permitting the filing and provides a process for staying and dismissing litigation by a vexatious litigant if the clerk mistakenly accepts it.

This bill would extend the authority described above to a presiding justice or to the designee of a presiding justice or a presiding judge. The bill would also permit a vexatious litigant who is subject to a prefilng order to file an application to vacate the prefilng order and remove his or her name from the Judicial Council's list of vexatious litigants, as specified. The bill would prohibit a vexatious litigant whose application is denied from filing another application before 12 months has elapsed after the date of the denial. The bill would permit a court to vacate a prefilng order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants upon a showing of a material change in the facts upon which the order was granted and finding that the ends of justice would be served by vacating the order.

(2) Existing law requires that specified civil cases be submitted to arbitration and that an arbitration award is final unless a request for a de novo trial is filed within 30 days after the date the arbitrator files the award with the court. Existing law requires that an

arbitration award be filed in the court in which the action is pending, and if a request for a de novo trial is not made and the award is not vacated, the award be entered in the judgment book.

This bill would further condition the finality of an arbitration award, as described above, on a request for dismissal not having been made, and would extend the period for making a request for dismissal or for a de novo trial to 60 days after the date the arbitrator files the award.

The people of the State of California do enact as follows:

SECTION 1. Section 391.7 of the Code of Civil Procedure is amended to read:

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth

in subdivision (b). If the presiding justice or presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, “litigation” includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

(f) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

SEC. 2. Section 391.8 is added to the Code of Civil Procedure, to read:

391.8. (a) A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council’s list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of a vexatious litigant’s name from the Judicial Council’s list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.

SEC. 3. Section 1141.20 of the Code of Civil Procedure is amended to read:

1141.20. (a) An arbitration award shall be final unless a request for a de novo trial or a request for dismissal in the form required by the Judicial Council is filed within 60 days after the date the arbitrator files the award with the court.

(b) Any party may elect to have a de novo trial, by court or jury, both as to law and facts. Such trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.

SEC. 4. Section 1141.23 of the Code of Civil Procedure is amended to read:

1141.23. The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. If there is no request for a de novo trial or a request for dismissal in the form required by the Judicial Council and the award is not vacated, the award shall be entered in the judgment book in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided by Section 473, 1286.2, or Judicial Council rule.

Approved _____, 2011

Governor